

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

JIMMY JARMAN

PLAINTIFF

vs.

Civil Action No. 1:93cv50-D-D

L.D. HANCOCK, d/b/a
HANCOCK FARMS, INC.

DEFENDANT

MEMORANDUM OPINION

Currently before the court is the motion of the plaintiff, Jimmy Jarman, for the entry of partial summary judgment in his favor as to the liability of the defendant in this action. Finding the motion well taken, the same shall be granted.

FACTUAL SUMMARY

On August 25, 1990, the plaintiff Jimmy Jarman was riding his motorcycle on Mitchell Road, a paved public road within the city limits of Tupelo, Mississippi. Mitchell Road reaches a dead-end at a point surrounded on all sides by property owned by the defendant L.D. Hancock. Mr. Hancock had, several months earlier, directed two of his employees to block Mitchell Road at the point where the road entered his property. The employees did so by stringing a metal cable across the road at a height of about three feet. While traveling down Mitchell Road, the plaintiff's motorcycle struck the metal cable. Jarman was thrown from his motorcycle and received serious injuries, including partial brain damage.

The plaintiff filed his action in this court on February 25,

1993, charging that the defendant was negligent in placing the metal cable or allowing the metal cable to be placed across Mitchell Road. The defendant moved to dismiss this action on jurisdictional grounds, and this court denied that motion by order dated March 3, 1995. The plaintiff has also moved for partial summary judgment on the issue of the defendant's liability in this cause, and this court takes up that matter today.

DISCUSSION

I. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." F.R.C.P. 56(c). The party seeking summary judgment carries the burden of demonstrating that there is an absence of evidence to support the non-moving party's case. Celotex Corp. v. Catrett, 477 U.S. 317, 325, 106 S. Ct. 2548, 2553, 91 L.Ed.2d 265 (1986). After a proper motion for summary judgment is made, the non-movant must set forth specific facts showing that there is a genuine issue for trial. Hanks v. Transcontinental Gas Pipe Line Corp., 953 F.2d 996, 997 (5th Cir. 1992). If the non-movant sets forth specific facts in support of allegations essential to his claim, a genuine issue is presented. Celotex, 477 U.S. at 327, 106 S.Ct. at 2554. "Where the record,

taken as a whole, could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L.Ed.2d 538 (1986); Federal Sav. and Loan Ins. v. Krajl, 968 F.2d 500, 503 (5th Cir. 1992). The facts are reviewed drawing all reasonable inferences in favor of the non-moving party. King v. Chide, 974 F.2d 653, 656 (5th Cir. 1992).

II. NEGLIGENCE *PER SE* AND THE DEFENDANT'S LIABILITY¹

Under Mississippi law, the violation of a regulatory or penal statute constitutes negligence *per se* and will support a cause of action in tort where the plaintiff is within the class protected by the statute, and where the harm sustained is the type sought to be prevented by the statute. Boyer v. Tenn Tom Constructors, 702 F.2d 609, 611 (5th Cir. 1983); Cuevas v. Royal D'Iberville Hotel, 498 So. 2d 346, 347 (Miss. 1986); Haver v. Hinson, 385 So. 2d 605, 608 (Miss. 1980). The doctrine of negligence *per se* eliminates the need of the plaintiff to show the lack of due care on the part of the defendant. Boyer, 702 F.2d at 611; Otto v. Specialties, Inc.,

¹ The defendant devotes virtually the entirety of his opposition to the plaintiff's motion to the subject of the plaintiff's asserted contributory negligence and comparative fault. This court agrees with the defendant that genuine issues of material fact exist as to these matters. However, while the extent of the defendant's liability in this action is certainly contingent upon the resolution of those issues, the unresolved nature of these issues in no way hinders the mere establishment of the defendant's liability. Finding that Mr. Jarman was contributorily negligent does not preclude a finding by this court that Mr. Hancock is liable for an undetermined portion of the plaintiff's injuries.

386 F.Supp. 1240 (N.D. Miss. 1974).

Mississippi statutory law provides that any person who obstructs a public roadway and does not immediately remove the obstruction will, upon conviction, be punished by either a fine of up to \$1,000.00 or up to six (6) months in the county jail, or both. *Miss. Code Ann.* § 65-7-7; 99-19-31 (Supp. 1994). The plaintiff has offered evidence showing that the defendant directed his agents to obstruct a public road - which they did by stringing a metal cable across it - and that the obstruction remained there for several months until the plaintiff struck it while riding a motorcycle. The defendant has failed to dispute these facts, either by evidence or argument.

This court finds that *Miss. Code Ann.* § 65-7-7 was enacted at least in part to prevent injuries to persons using public roadways, and that the legislature sought to prevent injuries resulting from motor vehicle accidents when enacting this statute. This court further finds that Mr. Jarman is within the class protected by the statute, and that the physical harms he sustained are of the type sought to be prevented by the statute. Mr. Hancock's actions in this matter constitute negligence *per se*, and the plaintiff is relieved from his usual burden of establishing both a duty and a breach of duty on the part of the defendant.

The court's inquiry cannot end here, however. The establishment of Hancock's negligence *per se* does not necessarily

make him liable to the plaintiff. The third step in the negligence inquiry, proximate cause, is not proven when negligence *per se* has been established. E.g., Hasson v. Hale, 555 So. 2d 1014, 1016 (Miss. 1990); Golden Flake Snack Foods v. Thornton, 548 So. 2d 382, 383 (Miss. 1989); Bryant v. Alpha Entertainment Corp., 508 So. 2d 1094, 1097 (Miss. 1987). The determination of proximate cause is a question of fact, which is normally submitted to a jury and not decided on summary judgment. See, e.g., Salster v. Singer Sewing Machine Co., 361 F.Supp 1056, 1060 (N.D. Miss. 1973); Hasson, 555 So. 2d at 1016; Golden Flake, 548 So. 2d at 383.

Nonetheless, "[i]f the facts and the inferences point so strongly and overwhelmingly in favor of [the summary judgment movant] that reasonable jurors could not arrive at a contrary verdict, then [summary judgment is] properly granted." Robertson v. Bell Helicopter Textron, Inc., 32 F.3d 948, 951 (5th Cir. 1994). Considering the undisputed facts in the case at bar, the court is of the opinion that it need not engage in a detailed discussion of proximate cause. No reasonable juror could determine that the action of Mr. Hancock directing the placement of an obstruction on a public road was not a substantial contributing factor of the plaintiff's injuries. Clark v. City of Pascagoula, 507 So. 2d 70, 76 (Miss. 1987). Likewise, no reasonable juror could find that an ordinarily prudent man would not have foreseen that some injury might occur from the placement of such an obstruction. Swan v.

I.P., Inc., 613 So. 2d 846, 856 (Miss. 1993); Marshal Durbin, Inc. v. Tew, 362 So. 2d 607, 608 (Miss. 1978). The defendant's discussion of proximate cause in his submissions to this court are relegated to the potential proximate cause relationship of the plaintiff's alleged contributory negligence to Mr. Jarman's injuries. This discussion offers no defense to the matter of the defendant's liability, for "an accident may have more than one proximate cause." Monroe County Electric Ass'n v. Pace, 461 So. 2d 739, 751 (Miss. 1984). The defendant has offered nothing to refute the plaintiff's assertion that the defendant's actions were a proximate cause of the plaintiff's injuries, and this court is of the opinion that there is no such proof.

CONCLUSION

This court finds as a matter of law that the defendant was negligent in directing the placement of an obstruction across a public roadway. This court further finds as a matter of law that the defendant's negligence was a proximate cause of the plaintiff's injuries. The issue of the plaintiff's supposed contributory negligence and the related issue of the extent of the defendant's liability are matters which are inappropriate for resolution on a motion for summary judgment, and will be submitted to a jury at the trial of this cause.

A separate order in accordance with this opinion shall issue this day.

THIS _____ day of April, 1995.

United States District Judge

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HANCOCK FARMS, INC.

DEFENDANT

ORDER GRANTING PLAINTIFF'S
MOTION FOR PARTIAL SUMMARY JUDGMENT

Pursuant to a memorandum opinion issued this day, it is hereby
ORDERED THAT:

1) the plaintiff's motion for partial summary judgment is
GRANTED. This court finds as a matter of law that the defendant
Hancock was negligent in placing or having placed an obstruction
across a public roadway, and that such negligence was a proximate
cause of the plaintiff's injuries. This court makes no finding as
to the contributory negligence, if any, of the plaintiff in this
matter or of the comparative fault of the plaintiff with relation
to the defendant.

All memoranda, depositions, affidavits and other matters
considered by the court in granting the plaintiff's motion for
partial summary judgment are hereby incorporated and made a part of
the record in this cause.

SO ORDERED, this the _____ day of April, 1995.

United States District Judge